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JAN - 7 2004
Department of Water Resources

January 5, 2004

Mr. Karl Dreher, Director
Idaho Dept. of Water Resources
1301 North Orchard St.
Boise, Idaho 83706

Re: Groundwater Management

Dear Director Dreher:

Let me take this opportunity to thank you for the interest you have taken in the Moscow aquifer and the challenges facing our community. Your attendance at our water workshop on November 24, 2003 and the insights you provided have been very helpful in reviewing our circumstances and the direction to be taken.

We appreciate the fact that a petition has been filed by representatives of two local citizen's groups to designate the Grande Ronde aquifer a Critical Groundwater Area pursuant to Idaho Code §42-233A and the Wanapum aquifer a Groundwater Management Area pursuant to Idaho Code §42-233B. Our understanding is that this is not a contested case at this time. We want to make sure that we preserve the City's opportunity to participate in the proceeding if IDWR considers it a contested case in the future.

The City has an interest in all of the actions requested in the proceeding, but we consider the requests to designate the aquifers as threshold issues that depending upon IDWR's response, will determine whether the other requests in the petition will be given consideration.

The petition and the circumstances surrounding the possible designation of the aquifers has prompted several public meetings, the first of which was held on December 15, 2003. At that meeting, the Moscow City Council held a joint meeting with the Latah County Commissioners to solicit public input regarding the groundwater issue. The meeting was standing room only, with some members of the public in attendance viewing the proceedings outside the Council Chambers on a monitor tuned to the city's closed-circuit television channel. Numerous members of the public, including representatives from the citizen groups which filed the petition, commented on both the petition and the need for designation of the aquifers.

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The public comments received at that meeting showed clearly that:

- Most citizens do not want all growth and development in the area stopped;
- There is a strong desire for local management of the water resource;
- There is a concern that City has not adequately complied with conservation aspects of Palouse Basin Aquifer Committee's 1992 *Groundwater Management Plan*;
- IDWR and other State assistance in implementing and helping to fund local management is favored by members of the public;
- Our community feels the need for continued resource management regarding use in both Idaho and Washington;
- The public wants and demands continued involvement in management of the resource.

Another meeting was held on December 22, 2003, during which the Latah County Commissioners presented and the Moscow City Council deliberated regarding the preferred path to proceed with management of the groundwater resource. To better understand the perspective of the City Council during these deliberations it will be helpful to review some of the history regarding the management of the aquifer. Although some of the following discussion is rather lengthy, our involvement in water issues has spanned several decades.

Palouse Basin Aquifer Committee (PBAC)

With the formation of the Pullman-Moscow Water Resources Committee in 1977 the major water users of the Palouse Basin set forth on the creation of a management program that has spanned 26 years. While the program had a short hiatus during high rainfall years in the early 1980's the Committee re-emerged in a larger stronger format in 1987 with the inclusion of representatives for Latah County, Idaho and Whitman County, Washington. Today, the Palouse Basin Aquifer Committee consists of representation from Whitman County, Latah County, Washington State University, University of Idaho, the City of Pullman, the City of Moscow, and the City of Colfax.

In the early years the focus of the Committee was research to determine the extent and character of the two main aquifers (the Grand Ronde and the Wanapum) that make up the Palouse Groundwater Basin. While research is still a major focus, PBAC was successful in the development and implementation of a *Ground Water Management Plan* in 1992. With this plan, the participating entities agreed to work jointly toward responsible voluntary management of the utilization of the groundwater resource. The intervening years have shown that, while the models utilized in the original plan may not have been 100% accurate, the local involvement and commitment of the local agencies has allowed for a continuation of progress towards the goals established with the original plan.

There is a local concern that the designation of the Idaho share of the Palouse Basin as a management area under the provision of Idaho Statutes would cause harm to this unique cooperative effort between Idaho and Washington agencies and result in a delay in the

projects and programs that are currently underway. There is also the potential that, as the designation would only effect Idaho entities, these very entities would be placed at a disadvantage in that the monetary commitments necessary to develop and manage a groundwater program would fall entirely on the Idaho citizens.

It is important to recall that both the Idaho Department of Water Resources and the Washington State Department of Ecology approved the program under which PBAC and the entities within the Palouse Basin operate. Although consideration was given in 1992 for designation as a Ground Water Management Area, this idea was rejected in favor of a local interagency solution. It was the understanding at the time that this approach was in the public interest as authorized under Section 42-237a.g., Idaho Code, as a program to balance withdrawals and recharge and to protect the pumping levels of holders of senior priority water rights. An agreement was developed at that ~~time~~^{time} ~~that~~^{time} stipulates that the administration of the ground water resources of the Pullman-Moscow aquifer will be in accordance with the adopted *Groundwater Management Plan* of the Pullman Moscow Water Resources Committee. This plan for management of the aquifer includes the premise that voluntary pumping restrictions would be set to limit the overall production from the aquifer to a growth rate of one percent per year and a total pumpage cap based on 125% of the five-year moving average flows from 1986. To date, the overall production of the PBAC entities has remained within the guidelines set forth in the 1992 plan.

In recognition of the open-ended nature of the 1992 plan, PBAC, in mid-1999, developed a research and project program that included a timeline and financial commitment for stabilizing the aquifer levels by 2020. This involved additional research on the characteristics of the aquifers as well as a number of pilot projects to test the theories developed for aquifer stabilization. As part of the commitment to this program the major members of PBAC agreed to increase their annual PBAC funding levels to \$28,000 throughout the life of the program. PBAC is now three years into the research and project program and numerous research studies and pilot projects are funded and either underway or nearing startup.

To designate the Idaho side of the aquifers pursuant to Idaho Code §42-233A or §42-233B in light of aquifer conditions *that are within the overall parameters anticipated by the 1992 Groundwater Management Plan* would be premature. The continuance of the programs set forth in the 1992 plan and subsequent 1999 program are likely to result in a more timely and cooperative effort to achieve the stated goals for the stabilization and sustainable use of the Palouse Basin aquifers.

City of Moscow Programs

The City of Moscow has had a water conservation education program in place for several years. This program involves citizen participation tours, elementary education programs and the employment of a part-time water conservation employee. The City's program also provides public education and distribution of free water saving devices. To date, the program has expended approximately \$12,000 on educational publications and has given away \$8,800 in conservation devices. These efforts will continue in the coming years.

In addition to these hands-on programs, the City of Moscow has funded several conservation related projects and studies that are either underway or which will occur in 2004. The first of these is a study that will review and evaluate the City's production and demand history; incentive, hardware, and technical assistance measures; public information and education programs; interim tiered rate structures; and water system measures to manage system water uses and losses. This study will provide recommendation to the City of Moscow on how best to proceed with the development of a more comprehensive water conservation program.

Subsequent studies will develop the new programs and will consider a permanent rate structure necessary to provide stable funding for the city's water utility. These studies are important in that they demonstrate the City of Moscow's commitment to develop programs to reduce the consumption of water from both the Grand Ronde and Wanapum aquifers.

All in all, in fiscal year 2004, the City has committed approximately \$150,000 to various projects, including rate studies, conservation studies and programs, direct conservation and various studies of the aquifer and water quality. The City's commitment to this resource is substantial.

Progress Achieved

In PBAC's 1992 *Groundwater Management Plan* goals there was no distinction made between what is now considered to be two separate aquifers. Subsequent research has indicated that the interaction between the upper Wanapum aquifer and the lower Grand Ronde aquifer is limited. The research has also indicated that the recharge of these two aquifers varies greatly. The Wanapum aquifer is readily recharged through surface water contact at numerous points along its easterly and northerly boundaries, while the Grande Ronde appears to have a very limited natural recharge potential. This situation led to the conclusion that water from the Wanapum aquifer could be used at a greater rate than currently occurs without having a substantial impact on static water levels. In accordance with this premise, the City of Moscow has increased use of the Wanapum aquifer while stabilizing the City's use of the Grand Ronde aquifer.

The City's pumping data corroborates that the use of the Grande Ronde aquifer appears to be stabilizing and since 1986, (the baseline date from which pumping limitations are measured) use of the Grande Ronde is well below the levels allowed under PBAC's 1992 *Groundwater Management Plan*. Conversely, use of the Wanapum aquifer has increased, resulting in pumping levels well in excess of the levels identified in PBAC's 1992 *Groundwater Management Plan*. At present, Moscow's use of the Wanapum aquifer (an aquifer which we know recharges consistently) amounts to approximately 34% of the water pumped by our community.

Preliminary indications are that this may be resulting in a slowing of the declining Grand Ronde aquifer levels over the past several years in the Moscow area. If studies validate this conclusion, it would be consistent with the concepts set forth in PBAC's 1992

Groundwater Management Plan. In order to validate this trend, another five or more years of data is necessary to establish a true measure. The establishment of a Critical Groundwater Area or Ground Water Management Area designation for the Grand Ronde aquifer at this time may be superfluous if the anticipated effects of the current *Groundwater Management Plan* are now beginning to be realized. Additionally, the inclusion of the Idaho entities in a new management designation may result in a delay in implementation of the regional programs that appear to be having a positive effect.

Certainly the information developed since the adoption of PBAC's 1992 *Groundwater Management Plan* indicates that the recharge potential of the Wanapum aquifer is of a substantial nature and does not appear to warrant any kind of a designation under Idaho law at this time.

Cooperation with the University of Idaho has resulted in a combined Moscow/UI per capita water use that is lower than any other PBAC entity. This has been achieved through the use of treated effluent from the City's wastewater treatment plant by the University of Idaho for irrigation purposes. This unique program illustrates the cooperation that exists among the PBAC partners.

Cross Border Concerns

The City has concerns regarding the designation and appointment of an advisory committee, especially a committee that does not include all members of the PBAC partnership. We believe that designation of such a committee will act to disenfranchise our Washington partners and could threaten continued interstate cooperation and management under any proposed plan. Further, designation and subsequent orders imposing strict application of the appropriation doctrine could threaten voluntary efforts to cooperatively use the resource for the maximum benefit of users on both sides of the state line. This could result in curtailment of use under junior priority rights in Idaho while freeing holders of senior priority rights in Idaho and both junior and senior priority right holders in Washington to pump and use water to the full extent of their rights.

Additionally, designation of an advisory committee by IDWR could endanger the ongoing cooperative effort available through PBAC. Under the existing plan, PBAC has access to local funding sources and can rely upon ordinances adopted by local governments to encourage conservation and other actions needed. It is our understanding that an advisory committee appointed by IDWR could only recommend actions for IDWR to implement. Under the appropriation doctrine, we believe that IDWR's authority to require conservation and other actions other than those aimed at curtailing junior priority rights appear limited. In order to preserve and take advantage of all available means of resource management, both directory and voluntary, the PBAC model offers the most options.

Substituting management under the appropriation doctrine as requested in the petition will require an adjudication of rights, including a determination of the aquifer(s) associated with use under each right. This could result in a potential situation where

recently developed private wells for multiple domestic and commercial uses could be curtailed.

Potential Impacts of a Designation

We hope that IDWR will consider the strides our community has made with our PBAC partners regarding management of our water resources; however, we do not believe that the legal criteria for designation of the aquifers are satisfied at this time. In reviewing IDWR's position in this matter, consider the following:

- Designation as a Critical Ground Water Area requires a determination by IDWR that withdrawals from the aquifer under existing permitted and applied for uses will exceed recharge of the aquifer. Designation as a GWMA requires a determination by IDWR that the aquifers or parts thereof are approaching critical conditions. Available data do not support these determinations.
- Pumping growth has been effectively controlled under PBAC's 1992 *Groundwater Management Plan*. The Palouse area has experienced growth since 1992 and high water demand drought years have occurred, but overall pumping is still within the parameters set forth in the plan.
- Ground water levels in the Wanapum and alluvial aquifers are rising. Those in the Grand Ronde appear to be stabilizing, at least in the Moscow sub-basin.
- Reliable information is not available at this time to accurately set the recharge amount available in Idaho to either of the aquifers.
- IDWR has not determined a reasonable pumping level for the area and to the extent recharge/water availability depends upon pumping levels, the amount of recharge cannot be determined with available data at this time.

The City also acknowledges IDWR's authority to manage the aquifer without designation as either a Critical Ground Water Area or Ground Water Management Area. The present PBAC plan assists IDWR in managing the resource pursuant to the following authorities:

- IDWR can control issuance of permits under Idaho Code § 42-203A;
- IDWR can prevent unauthorized uses under Idaho Code § 42-351;
- IDWR can require installation of measuring devices, measuring and reporting pursuant to Idaho Code §42-701.

We believe that designation could foster some procedural problems for the Department as well:

- For instance, IDWR could lose its flexibility to allow existing uses to continue if it designates either or both aquifers as a Critical Ground Water Area or Ground Water Management Area. Idaho Code §§ 42-233A and 42-233B require IDWR to issue an order curtailing diversion and use under junior priority rights when it has determined that an over-draft condition exists. Because IDWR must determine that such a condition either exists or is being approached, the Department could be forced to issue a curtailment order once it designates the area(s).

- Regarding existing water rights, IDWR may be forced to initiate adjudication because it does not have an accurate listing of all existing rights and the existing records do not define which aquifer can be appropriated under a "ground water right." In relation to the designated areas themselves, IDWR may have to initiate a study to determine the boundaries of the area to be administered, to refine the estimates of recharge, and to determine the timing and extent of impact of withdrawals from one well on other wells.
- Further, designation and subsequent management under the appropriation doctrine would force management involving users in both states. This could lead to negotiation of an interstate compact, an action in federal court to apportion the resource between the states, or a federal lawsuit to adjudicate rights for interstate management.
- Finally, IDWR would be locked into a management protocol that is designed to protect senior priority rights. Because this is the goal of the appropriation doctrine, IDWR would be less able to consider public involvement and public interest in managing the resource than under its present recognition of the PBAC plan.

Recommendation of the City of Moscow

At the December 22, 2003 meeting, the Moscow City Council made the unanimous recommendation that IDWR forebear taking any action on the petition at this time. This would allow the City, the citizen groups, the community, and the Palouse Basin Aquifer Committee to meet together to explore opportunities for working together to achieve optimal management of our water resource. In the absence of designation, the Council has authorized me to proceed with the appointment of a local water resource advisory group which will include representatives of all interest and user groups and which will include PBAC representation. The purpose of this group is to assist the City of Moscow and other PBAC partners in managing and conserving the resource.

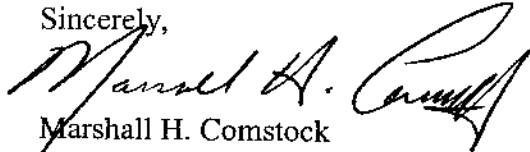
Moscow's staff is exploring ways to collaborate and work with the citizen groups who are represented by the petitioners. We are well aware that success in this endeavor and optimal conservation of the water resource must involve all public interests. With our partners, the City is committed to achieve the goals as contained in the PBAC's 1992 *Groundwater Management Plan* and as previously mentioned, the first step to be taken is conservation. In addition to the programs already in place, Moscow will consider measures to encourage conservation, including restrictions on irrigation, tiered water rate structures, amendments to development standards which contemplate low water use landscaping, and stepping up our efforts in distributing water conservation devices. We are committed to giving these issues priority.

We ask only that IDWR grant the City and PBAC the opportunity to manage this valuable resource locally. We have been studying the aquifers for many years and although our conservation efforts could have been more intensive, we are committed to working with our community, PBAC partners and IDWR in this project. If our efforts are successful, everyone wins and we will have a working model of interstate cooperation for

management of an interstate resource. If our efforts are not successful within a reasonable time, IDWR can then designate the aquifers and proceed with management.

We look forward to hearing from you regarding our recommendation.

Sincerely,


Marshall H. Comstock
Mayor

c: City Council
Gary J. Riedner, City Supervisor
Les MacDonald, Public Works Director
Norman Young, ERO Resources Corp.
Latah County Commissioners
Whitman County Commissioners
Gary Michael, Interim President, University of Idaho
V. Lane Rawlins, President, Washington State University
Glenn Johnson, Mayor, City of Pullman
Norma Becker, Mayor, City of Colfax
Michael Echanove, Mayor, City of Palouse
Jay Becker, Chair, PBAC
Larry Kirkland, Executive Secy., PBAC
Senator Gary Schroeder
Rep. Tom Trail
Rep. Shirley Ringo
Tom Lamar, PCEI
Friends of the Clearwater
Palouse Water Conservation Network
Moscow Civic Association
Palouse Group of the Sierra Club
Idaho Conservation League